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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,251	12/01/2003	Robert Jason Vickers	P146	1935
27752 7590 09/22/2008 THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202				
EXAMINER				
LAU, JONATHAN S				
ART UNIT		PAPER NUMBER		
1623				
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09/22/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/725,251

**Applicant(s)**

VICKERS ET AL.

**Examiner**

Jonathan S. Lau

**Art Unit**

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 9-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07 July 2008 has been entered.

This Office Action is responsive to Applicant's Amendment and Remarks, filed 07 July 2008, in which claims 1 and 3 are amended to change the scope and breadth of the claim.

This application is a domestic application, filed 01 Dec 2003.

Claims 1-20 are pending in the current application. Claims 9-20, drawn to non-elected inventions, are withdrawn. Claims 1-8 are examined on the merits herein.

### ***Rejections Withdrawn***

Applicant's Amendment, filed 07 Jul 2008, with respect to claims 1-8 rejected under 35 USC 102(b) as being anticipated over Howard et al. (Nutrition Research, 2000, 20(10), p1473-1484; Of record) has been fully considered and is persuasive, as amended claim 1 recites a range of "from about 0.01% to 0.19% of short chain

oligofructose" and amended claim 3 recites a range of "from about 0.05% to 0.19% of short chain oligofructose" and do not include the broadening term "about" with regard to the upper limit of the claimed range.

This rejection has been **withdrawn**.

Applicant's Amendment, filed 07 Jul 2008, with respect to claims 1-8 rejected under 35 USC 102(b) as being anticipated over Reinhart et al. (U.S. Patent No. 5,776,524; Of record) has been fully considered and is persuasive, as amended claim 1 recites a range of "from about 0.01% to 0.19% of short chain oligofructose" and amended claim 3 recites a range of "from about 0.05% to 0.19% of short chain oligofructose" and do not include the broadening term "about" with regard to the upper limit of the claimed range.

This rejection has been **withdrawn**.

Applicant's Amendment, filed 07 Jul 2008, with respect to claims 1-3 and 5-6 rejected under 35 USC 102(b) as being anticipated over Houdijk et. al. (Livestock production science, 73, 2002, 175-184; Of record) has been fully considered and is persuasive, as amended claim 1 recites a range of "from about 0.01% to 0.19% of short chain oligofructose" and amended claim 3 recites a range of "from about 0.05% to 0.19% of short chain oligofructose" and do not include the broadening term "about" with regard to the upper limit of the claimed range.

This rejection has been **withdrawn**.

Applicant's Amendment, filed 07 Jul 2008, with respect to claims 1-8 rejected under 35 USC 103(a) as being unpatentable over Houdijk et. al. (Livestock production science, 73, 2002, 175-184; of record) in view of Howard et al. (Nutrition Research, 2000, 20(10), 1473-1484; of record) has been fully considered and is persuasive, as amended claim 1 recites a range of "from about 0.01% to 0.19% of short chain oligofructose" and amended claim 3 recites a range of "from about 0.05% to 0.19% of short chain oligofructose" and do not include the broadening term "about" with regard to the upper limit of the claimed range.

This rejection has been **withdrawn**.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation "selected from the group consisting of dry composition, semi-moist composition, wet composition, and mixtures thereof".

The term "semi-moist composition" in claim 8 is a relative term which renders the claim indefinite. The term "semi-moist composition" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the

invention. No definition is provided for what amount of moisture distinguishes a semi-moist composition from a wet composition. While the term is used in art of pet food, there is no standard definition clearly identifying the degree of moisture in a "semi-moist composition" or particularly pointing out how it is distinct from a "wet composition". The ordinary definition of "wet", consisting of, containing, covered with, or soaked with liquid (as water), encompasses all degrees of moisture. Therefore, absent a clear definition of the term, claim 8 is indefinite for failing to particularly point out and distinctly claim the subject matter.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Amended Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Speights et al. (United States Patent 4,987,124, issued 22 Jan 1991, cited in PTO-892).

Speights et al. discloses an animal feed composition comprising fructo-oligosaccharides exemplified by "Neosugar" (abstract). Speights et al. discloses Neosugar is a mixture including 1-kestose, nystose, and 1-fructofuranosyl-nystose, which is another name for 1F-beta-fructofuranosylnystose, and envisions the composition having 40% by weight 1-kestose, 55% by weight nystose, and 15% by

weight 1-fructofuranosyl-nystose (column 5, lines 15-25). Speights et al. discloses the effective composition of "Neosugar" is present in said feed composition in an amount of about 0.05% by weight to about 5% by weight (column 9, lines 10-15), meeting the limitations of instant claims 1-3. Speights et al. discloses the composition intended for swine (column 13, lines 15-20). Swine or pigs can be kept as pets, thus the disclosed composition is capable of being used according to the intended use limitation, "A companion animal composition", of instant claims 1-3.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Amended Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reinhart et al. (U.S. Patent No. 5,776,524, issued 07 Jul 1998, of record).

Reinhart et al. teaches the use of about 0.2% by weight of fructooligosaccharides in pet food. (Column 1, lines 50-55). Reinhart et al. further discloses Nutraflora as a source of commercially available fructooligosaccharides. (Column 2, lines 35-40). The commercial product Nutraflora is defined in the instant specification as having 34% 1-kestose, 55% nystose and 10% 1F-beta-fructofuranosylnystose (Instant Specification, Page 4, second paragraph). Reinhart et al. further teaches the use of fructooligosaccharides with other fiber sources such as rice, corn, and beet pulp (Column 3, Table 1). Reinhart et al. teaches the pet food is nutritionally sound and comprises chicken or fish protein (column 2, lines 40-45). Reinhart et al. teaches measurement on a dry matter basis (column 1, lines 50-55), implicitly teaching a dry composition.

Reinhart et al. does not specifically teach a range of "from about 0.01% to 0.19% of short chain oligofructose" (instant claim 1). Reinhart et al. does not specifically teach a range of "from about 0.05% to 0.19% of short chain oligofructose" (instant claim 3). Reinhart et al. does not specifically teach a range of "from about 0.1% to about 0.18% of short chain oligofructose" (instant claim 7).

It would have been obvious to one of ordinary skill in the art at the time of the invention to practice the invention of Reinhart et al. wherein the pet food comprises 0.19% by weight of fructooligosaccharides or wherein the pet food comprises about 0.18% by weight of fructooligosaccharides. "[A] *prima facie* case of obviousness exists



where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties.” See MPEP 2144.05 I. One of ordinary skill in the art would have a reasonable expectation of the same properties in a pet food comprising about 0.2% by weight of said fructooligosaccharides as in a pet food comprising 0.19% or about 0.18% by weight of said fructooligosaccharides.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Speights et al. (U. S. Patent 4,987,124, issued 22 Jan 1991, cited in PTO-892) in view of Reinhart et al. (U.S. Patent No. 5,776,524, issued 07 Jul 1998, of record).

Speights et al. discloses as above. Speights et al. discloses said feed composition also includes some material which is nutritive for the animal to which the feed composition is fed (column 9, lines 1-5). Speights et al. discloses said feed composition may include a grain product (column 9, lines 5-10), which are well known in the nutritional arts to be a source of dietary fiber. Speights et al. discloses said feed composition may be mixed with nutritive feed material or water (column 8, lines 45-50), disclosing dry and wet compositions.

Speights et al. does not specifically disclose said feed composition comprising a protein source (instant claim 3). Speights et al. does not specifically disclose the species of fiber source (instant claim 6). Speights et al. does not specifically disclose a range of “from about 0.1% to about 0.18% of short chain oligofructose” (instant claim 7).

Reinhart et al. teaches as above.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Speights et al. in view of Reinhart et al. Both Speights et al. and Reinhart et al. are drawn to animal feed compositions containing fructooligosaccharides. The intended animals fed by the animal feed compositions disclosed by Speights et al. encompass animals that may be kept as pets. The intended animals fed by the pet food compositions disclosed by Reinhart et al. span a wide variety of animals, such as dogs, cats and horses (Reinhart et al., abstract). One of ordinary skill in the art would be motivated to combine Speights et al. in view of Reinhart et al. because Speights et al. discloses said feed composition also includes some material which is nutritive for the animal to which the feed composition is fed and Reinhart et al. teaches pet food that is nutritionally sound. With regard to the range of "from about 0.1% to about 0.18% of short chain oligofructose", Speights et al. discloses the effective composition of "Neosugar" is present in said feed composition in an amount of about 0.05% by weight to about 5% by weight (Speights et al. column 9, lines 10-15). "[A] prior art reference that discloses a range encompassing a somewhat narrower claimed range is sufficient to establish a prima facie case of obviousness." See MPEP 2144.05 I. Speights et al. also provides guidance for selecting the amount of the effective composition based on the size of the animal (Speights et al. column 8, lines 50-60).

### ***Conclusion***

No claim is found to be allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan S. Lau whose telephone number is 571-270-3531. The examiner can normally be reached on Monday - Thursday, 9 am - 4 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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